



# SECTION D – REGULATIONS ON EMPLOYEE CONDUCT

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### **I. Responsibilities**

All employees are responsible for becoming familiar with and abiding by policies and guidelines covering

- Personal conduct.
- Acceptance of gifts and favors.
- Use of the names of the Laboratory and the University of California.
- Outside employment.
- Conflict of interest.
- Patents and discoveries.
- Privileged information.



## II. Personal Conduct–Policy

Employees are expected to conduct themselves responsibly. Improper conduct or violation of any of the following regulations may be grounds for corrective action ([see Section E, Part II](#)) or dismissal ([see Section K, Part III](#)). Some violations including, but not limited to, misuse of Laboratory property or funds may result in criminal prosecution.

### II.1. Conduct on Laboratory Premises

Conduct such as, but not limited to, the following is improper:

- Striking another employee.
- Using threatening or abusive language.
- Gambling.
- Behaving indecently or immorally.
- Being insubordinate to proper authority.
- Performing sabotage or malicious mischief.
- Sexual harassment.
- Misconduct in research.

### II.2. Laboratory Policy on a Drug-Free Workplace

#### II.2.1. Statement of Policy

The Laboratory strives to maintain a workplace free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act, 21 U.S.C. Section 812). Unlawful manufacture, distribution, dispensation, possession, use, or being under the influence of controlled substances by Laboratory employees in the workplace or while on Laboratory business is prohibited. Unauthorized possession or use, or being under the influence of alcohol on site is also prohibited. Legal substances (e.g., controlled substances prescribed for or administered to the employee by a licensed physician or over-the-counter drugs purchased legally) shall not be used in a manner that impairs performance of assigned tasks. All employees are expected to abide by the terms of this policy as a condition of employment.

#### II.2.2. Substance Testing



All Laboratory employees are subject to testing for legal or illegal substances in the urine or for alcohol in the blood or breath ("substance testing") for cause and when determined by the Site Occupational Medical Director (SOMD), or designee, to be appropriate as part of a medical and/or psychological evaluation involving deteriorating performance. Employees in Laboratory-designated Safety- or Security-Sensitive Positions are subject to special additional testing requirements. [See Section D.II.2.5.](#)

In the event an employee does not submit to testing, refuses to sign an information authorization release, or to cooperate with the testing process, or in any way adulterates or falsifies specimens, an inference may be drawn that the employee is under the influence of a substance. The employee will be subject to corrective action, up to and including dismissal, based upon the employee's conduct and the inference. [See also Section E.III. Procedure A - Substance Testing.](#)

## **II.2.3 Consequences of Violation of Policy**

Employees found to be in violation of this policy are subject to corrective action, up to and including dismissal, under applicable Laboratory personnel policies ([see Section E.II. - Corrective Action](#)).

Those employees who are not dismissed for a positive substance test will be required to undergo medical and/or psychological evaluation to assess the need for rehabilitation. If rehabilitation is offered following the evaluation, the employee may be required, as a condition of continuing employment, to participate in a Laboratory-approved rehabilitation program in lieu of or in addition to corrective action. The rehabilitation program may involve periodic unannounced follow-up substance testing. The employee may also be required to submit to periodic unannounced substance testing as specified in the corrective action document. Subsequent positive test(s) will subject the employee to corrective action up to and including dismissal.

An employee's enrollment in a recovery program will be considered in any assessment of appropriate corrective action.

## **II.2.4. Notification of Conviction**

The Drug-Free Workplace Act of 1988 (41 U.S.C. §701, et seq.) requires that employees directly engaged in the performance of work on a Federal contract or grant shall notify their supervisor within five (5) days if they are convicted of any criminal drug statute violation occurring in the workplace or while on Laboratory business. The supervisor will immediately inform the [Staff Relations Division](#) of Human Resources, which will assure the required notification to DOE. [See also Section E.III. Procedure B, "Laboratory Substance Abuse Programs."](#)

## **II.2.5. Special Additional Provisions for Employees in Laboratory-Designated Safety- or Security-Sensitive Positions**



**a. Safety- or Security-Sensitive Positions Defined.** Employees in positions designated by the Laboratory as safety- or security-sensitive are subject to pre-assignment, random selection and other substance testing under applicable Laboratory and Federal rules and regulations. Safety- and security-sensitive positions include those in the [Personnel Assurance Program \(PAP\)](#), the [Personnel Security Assurance Program \(PSAP\)](#), Laboratory commercial drivers license holders, and such other positions as may be designated by the DOE and/or the Laboratory in which failure of an employee adequately to discharge his or her duties could significantly harm the environment, public health or safety, or national security.

**b. Pending Test Results.** The majority of substance testing for employees in safety- and security-sensitive positions is routine, random testing. If the substance testing is for cause, the Department Head will determine whether the employee will be permitted to continue working in the designated position, temporarily placed in a non-designated position, or placed on appropriate leave status, pending the results of substance testing.

**c. First Positive Test.** Upon the first positive test for illegal controlled substances and/or alcohol, an employee in a designated position will be immediately removed from the designated position and will either be placed in a non-designated position or on appropriate leave status, as determined by the Laboratory. The employee is also subject to corrective action, up to and including dismissal. Those employees who are not dismissed will be required to undergo medical and/or psychological evaluation to assess the need for substance abuse rehabilitation. If rehabilitation is offered, the employee may be required to participate in a Laboratory-approved rehabilitation program in lieu of or in addition to corrective action.

**d. Second Positive Test.** An employee returned to a safety- or security-sensitive position following rehabilitation for a first positive test will in all cases be dismissed from Laboratory employment upon a second positive test for an illegal controlled substance and/or alcohol. [See also Section E.III. Procedure A - Substance Testing.](#)

## II.3. Integrity in Research

It is the policy of the Lawrence Livermore National Laboratory to provide an environment that promotes integrity, to require the highest ethical standards from all individuals involved in scientific research, and to inquire into and, if necessary, investigate and resolve all instances of alleged misconduct in scientific research.

- Allegations concerning misconduct in research shall be filed in accordance with the provisions of the Laboratory's Administrative Review Procedure as set forth in [Section H of this Manual](#).
- Misconduct in research means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scholarly and scientific community for proposing, conducting, or reporting research.



Misconduct does not include honest error or honest differences in interpretations or judgments of data.

- Employees who engage in misconduct in research are subject to the Laboratory's corrective action policies as set forth in [Section E of this Manual](#).
- It is the responsibility of each individual engaged in research at the Laboratory to be informed of Laboratory policies relating to research and, when appropriate, of the policies and procedures of the agencies funding his or her research.

## II.4. Sexual Harassment

The University of California and Lawrence Livermore National Laboratory (the Laboratory) are committed to creating and maintaining a community where all persons who participate in Laboratory programs and activities can work and learn together in an atmosphere free of all forms of harassment, exploitation, or intimidation. Every member of the Laboratory community should be aware that the Laboratory is strongly opposed to sexual harassment, and that such behavior is prohibited both by law and by Laboratory policy. The Laboratory will respond promptly and effectively to reports of sexual harassment, and will take appropriate action to prevent, to correct, and if necessary, to discipline behavior that violates this policy.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment, unreasonably interferes with a person's work performance, or creates an intimidating, hostile or offensive working environment. In the interest of preventing sexual harassment, the Laboratory will respond to reports of any such conduct.

Sexual harassment may include incidents between any members of the Laboratory community, including staff and non-employee participants in Laboratory programs, such as vendors, contractors, and visitors. Sexual harassment may occur in hierarchical relationships or between peers, or between persons of the same sex or opposite sex.

In determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

This policy covers unwelcome conduct of a sexual nature. Consensual romantic relationships between members of the Laboratory community are subject to other Laboratory policies. While romantic relationships between members of the Laboratory community may begin as consensual, they may evolve into situations that lead to charges of sexual harassment, subject to this policy.



Harassment that is not sexual in nature but is based on gender, sex-stereotyping, or sexual orientation also is prohibited by the Laboratory's nondiscrimination policies if it is sufficiently severe to deny or limit a person's ability to participate in or benefit from Laboratory educational programs, employment, or services. While discrimination based on these factors may be distinguished from sexual harassment, these types of discrimination may contribute to the creation of a hostile work environment. Thus, in determining whether a hostile environment due to sexual harassment exists, the Laboratory may take into account acts of discrimination based on gender, sex-stereotyping, or sexual orientation.

This policy also prohibits retaliation against a person who reports sexual harassment, assists someone with a report of sexual harassment, or participates in any manner in an investigation or resolution of a sexual harassment report. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.

Any member of the Laboratory community may report conduct that may constitute sexual harassment under this policy. In addition, supervisors, managers, and other designated employees are responsible for taking whatever action is necessary to prevent sexual harassment, to correct it when it occurs, and to report it promptly to the [Sexual Harassment Officer](#). An individual also may file a complaint or grievance alleging sexual harassment under the applicable Laboratory complaint resolution procedure [Section H](#).

The Laboratory shall provide a prompt and effective response to reports of sexual harassment in accordance with the Laboratory [Procedures for Responding to Reports of Sexual Harassment](#). A prompt and effective response may include early resolution, formal investigation, and/or targeted training or educational programs. Upon findings of sexual harassment, the Laboratory may offer remedies to the individual or individuals harmed by the harassment consistent with Laboratory complaint resolution procedures. Any member of the Laboratory community who is found to have engaged in sexual harassment is subject to disciplinary action up to and including dismissal in accordance with the applicable Laboratory disciplinary procedure [Section E](#). Generally, disciplinary action will be recommended when the harassing conduct is sufficiently severe, persistent, or pervasive that it alters the conditions of employment. Any manager, supervisor, or designated employee responsible for reporting or responding to sexual harassment that knew about the harassment and took no action to stop it or failed to report the prohibited harassment also may be subject to disciplinary action. Conduct by an employee that is sexual harassment or retaliation in violation of this policy is considered to be outside the normal course and scope of employment.

Because sexual harassment frequently involves interactions between persons that are not witnessed by others, reports of sexual harassment cannot always be substantiated by additional evidence. Lack of corroborating evidence or "proof" should not discourage individuals from reporting sexual harassment under this policy. However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for the truth, may be subject to disciplinary action under the





Laboratory disciplinary procedure [Section E](#). This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by an investigation.

As participants in a public university, Laboratory staff enjoys significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This policy is intended to protect members of the Laboratory community from discrimination, not to regulate protected speech. The Laboratory also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

The federal Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) also investigate complaints of unlawful harassment in employment. The U.S. Department of Education Office for Civil Rights (OCR) investigates complaints of unlawful harassment of students in educational programs or activities. These agencies may serve as neutral fact finders and attempt to facilitate the voluntary resolution of disputes with the parties. For more information, contact the nearest office of the EEOC, DFEH or OCR listed in the telephone directory.

## **II.4. Reporting and Responding to Reports of Sexual Harassment - Procedure**

These procedures provide a process for all members of the Laboratory community to report sexual harassment and provides for prompt and effective response to reports of sexual harassment. The primary purpose of the sexual harassment complaint process is to encourage and facilitate resolution of the complaint in a prompt and equitable manner. These procedures also cover reports of retaliation related to reports of sexual harassment.

### **II.4.1. Sexual Harassment Officer (Title IX Compliance Coordinator)**

The Staff Relations Manager is the [Laboratory Sexual Harassment Officer](#). The Sexual Harassment Officer responsibilities include, but may not be limited to the following duties:

- a. Plan and manage the sexual harassment education and training programs.
- b. Provide prompt and effective response to reports of sexual harassment in accordance with this policy.
- c. Maintain [records](#) of reports of sexual harassment at the Laboratory as appropriate.
- d. Prepare and submit an annual report to the Office of the President, for submission to The Regents, on sexual harassment complaint activity during the preceding calendar year.



[Employee Relations and Staff Relations](#) personnel may also be contacted for additional information regarding behavior that may be sexual harassment.

## **II.4.2. Making Reports of Sexual Harassment**

All members of the Laboratory community are encouraged to contact the [Sexual Harassment Officer](#) if they observe or encounter conduct that may be subject to the Laboratory's Policy on Sexual Harassment. Reports of sexual harassment may be brought to the Sexual Harassment Officer, to a Human Resources [Representative](#), to any Manager or Supervisor, or to the Employee Relations office personnel. If the person to whom harassment normally would be reported is the individual accused of harassment, reports may be made to another Manager, Supervisor, Human Resources Representative, or Employee Relations personnel. Managers, Supervisors, Human Resource Representatives and Employee Relations personnel shall be required to notify the Sexual Harassment Officer when a report is received.

The personnel cited above have an obligation to respond to reports of sexual harassment, even if the individual making the report requests that no action be taken. An individual's requests regarding the confidentiality of reports of sexual harassment will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of the Laboratory's legal obligation to ensure a working environment free from sexual harassment and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation, although the Laboratory will comply with requests for confidentiality to the extent possible.

Reports of sexual harassment shall be brought as soon as possible after the alleged conduct occurs, optimally within one year. Prompt reporting will enable the Laboratory to investigate the facts, determine the issues, and provide an appropriate remedy or disciplinary action. For reports of sexual harassment brought after one year, the Laboratory shall respond to reports of sexual harassment to the greatest extent possible, taking into account the amount of time that has passed since the alleged conduct occurred.

## **II.4.3. Options for Resolution**

The primary purpose of the sexual harassment complaint process is to encourage and facilitate resolution of the complaint in a prompt and equitable manner. In general, a complaint involving sexual harassment is handled by the [Staff Relations Division](#). Complainants may file a complaint using either the LLNL sexual harassment complaint procedure or the [formal appeals procedures](#). The Employee Relations office personnel from Human Resources are available for those seeking general information about the complaint procedures or who have questions and/or inquiries.

### **Early Resolution:**



Early Resolution of complaints is encouraged. Employee Relations personnel can help to resolve concerns at the earliest stage possible, with the cooperation of all parties involved. Early Resolution includes options such as mediating an agreement between the parties, separating the parties, referring the parties to counseling programs, negotiating an agreement for disciplinary action, conducting targeted educational and training programs, or providing remedies for the individual harmed by the harassment. Early Resolution also includes options such as discussions with the parties, making recommendations for resolution, and conducting a follow-up review after a period of time to assure that the resolution has been implemented effectively.

Employee Relations office personnel serve as the Laboratory's sexual harassment information centers. These individuals serve as a resource to any employee who has a sexual harassment complaint or inquiry. Additionally, they may inform the complainant regarding applicable Laboratory policies and procedures and outline various options available, both informal and formal, for resolving the complaint. While the Laboratory encourages early resolution of a complaint, the Laboratory does not require that parties participate in early resolution prior to the Laboratory's decision to initiate a formal investigation.

### **Formal Investigation:**

**Staff Relations Specialists** are designated and serve as the Laboratory's Complaint Resolution Officers to investigate sexual harassment complaints. Formal investigation of reports of sexual harassment shall incorporate the following standards:

- a. The individual(s) accused of conduct violating the Policy on Sexual Harassment shall be provided a copy of a full and complete written statement of the allegations, and a copy of the Policy on Sexual Harassment and Procedures for Responding to Reports of Sexual Harassment.
- b. The individual(s) conducting the investigation shall be familiar with the Policy on Sexual Harassment and have training or experience in conducting investigations.
- c. The investigation generally shall include interviews with the parties if available, interviews with other witnesses as needed, and a review of relevant documents as appropriate. Disclosure of facts to parties and witnesses shall be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation shall be advised that maintaining confidentiality is essential to protect the integrity of the investigation.
- d. Upon request, the complainant and the accused may each have a representative present when he or she is interviewed. Other witnesses may have a representative present at the discretion of the investigator or as required by applicable Laboratory policy or collective bargaining agreement.



- e. At any time during the investigation, the investigator may recommend that interim protections or remedies for the complainant or witnesses be provided by appropriate Laboratory officials. These protections or remedies may include separating the parties, placing limitations on contact between the parties, or making alternative working arrangements. Failure to comply with the terms of interim protections may be considered a separate violation of the Policy on Sexual Harassment.
- f. The investigation shall be completed as promptly as possible and in most cases within 60 working days of the date the request for formal investigation was filed. This deadline may be extended on approval by a designated Laboratory official.
- g. Generally, an investigation should result in a written report that at a minimum includes a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a determination by the investigator as to whether Laboratory policy has been violated. The report also may contain a recommendation for actions to resolve the complaint, including educational programs, remedies for the complainant, and a referral to disciplinary procedures as appropriate. The report shall be submitted to a designated Laboratory official with authority to implement the actions necessary to resolve the complaint. The report may be used as evidence in other related procedures, such as subsequent complaints, grievances and/or disciplinary actions.
- h. The complainant and the accused shall be informed promptly in writing when the investigation is completed. The complainant shall be informed if there were findings made that the policy was or was not violated and of actions taken to resolve the complaint, if any, that are directly related to the complainant, such as an order that the accused not contact the complainant. In accordance with Laboratory policies protecting individuals' privacy, the complainant may generally be notified that the matter has been referred for disciplinary action, but shall not be informed of the details of the recommended disciplinary action without the consent of the accused.
- i. The complainant and the accused may request a copy of the investigative report pursuant to Laboratory policy governing privacy and access to personal information. However, the report shall be redacted to protect the privacy of personal and confidential information regarding all individuals other than the individual requesting the report in accordance with Laboratory policy.

An individual who is subjected to retaliation (e.g., threats, intimidation, reprisals, or adverse employment actions) for having made a report of sexual harassment in good faith, who assisted someone with a report of sexual harassment, or who participated in any manner in an investigation or resolution of a report of sexual harassment, may make a report of retaliation under these procedures. The report of retaliation shall be treated as a report of sexual harassment and will be subject to the same procedures.



## II.4.4. Grievances Involving Allegations of Sexual Harassment

An individual who believes he or she has been subjected to sexual harassment may file a grievance pursuant to the complaint procedure listed in [PPPM Section H, Grievances](#). Such complaint or grievance may be filed either instead of or in addition to making a report of sexual harassment to the Sexual Harassment Officer. A complaint or grievance alleging sexual harassment must meet all the requirements under the applicable complaint resolution or grievance procedure, including time limits for filing.

If a complaint or grievance alleging sexual harassment is filed in addition to a report made to the Sexual Harassment Officer or other appropriate official designated to review and investigate sexual harassment complaints under this policy, the complaint or grievance shall be held in abeyance subject to the requirements of any applicable complaint resolution or grievance procedure, pending the outcome of the early resolution or formal investigation procedures.

If an individual wishes to proceed with the complaint or grievance, the early resolution or formal investigation shall constitute the first step or steps of the applicable complaint resolution or grievance procedure.

An individual who has made a report of sexual harassment also may file a complaint or grievance alleging that the actions taken in response to the report of sexual harassment did not follow Laboratory policy. Such a complaint or grievance may not be filed to address a disciplinary sanction imposed upon the accused. Any complaint or grievance regarding the resolution of a report of sexual harassment under this procedure must be filed in a timely manner. The time period for filing begins on the date the individual was notified of the outcome of the sexual harassment investigation or other resolution process pursuant to this policy, and/or of the actions taken by the Laboratory in response to the report of sexual harassment, whichever is later.

Findings of violations of the Policy on Sexual Harassment may be considered in determining remedies for individuals harmed by the sexual harassment and shall be referred to applicable [Laboratory disciplinary procedures](#). Violations of the policy may include engaging in sexual harassment, retaliating against a complainant reporting sexual harassment, violating interim protections, and filing intentionally false charges of sexual harassment. Investigative reports made pursuant to this policy may be used as evidence in subsequent complaint resolution, grievance, and disciplinary proceedings as permitted by the applicable procedures.

The Laboratory shall protect the privacy of individuals involved in a report of sexual harassment to the extent required by law and Laboratory policy. A report of sexual harassment may result in the gathering of extremely sensitive information about individuals in the Laboratory community. While such information is considered confidential, Laboratory policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a [report of](#)



sexual harassment. In such cases, every effort shall be made to redact the records in order to protect the privacy of individuals. An individual who has made a report of sexual harassment may be advised of sanctions imposed against the accused when the individual needs to be aware of the sanction in order for it to be fully effective (such as restrictions on communication or contact with the individual who made the report). However, information regarding disciplinary action taken against the accused shall not be disclosed without the accused's consent, unless it is necessary to ensure compliance with the action or the safety of individuals.

In implementing the sexual harassment complaint resolution process, and in accordance with existing policies, every reasonable effort shall be made to protect the privacy of all parties. Confidential resources are available via the [Ombudsman Program](#) and/or the [Employee Assistance Program](#). Members of the Laboratory community can consult these resources for advice and information regarding making a report of sexual harassment. Reporting sexual harassment to the Ombudsman or Employee Assistance does not constitute reporting a complaint to Laboratory management and/or the Sexual Harassment Prevention Officer. These resources provide individuals who may be interested in bringing forward a report of sexual harassment with a safe place to discuss their concerns and learn about the procedures and potential outcomes involved.

The office of the Sexual Harassment Officer is responsible for maintaining records relating to sexual harassment reports, investigations, and resolutions. Records shall be maintained in accordance with [Laboratory records policies](#), generally five years after the date the complaint is resolved. Records may be maintained longer at the discretion of the Sexual Harassment Officer in cases where the parties have a continuing affiliation with the Laboratory. All records pertaining to pending litigation or a request for records shall be maintained in accordance with instructions from legal counsel.

## **II.5. Other Improper Conduct**

Conduct that brings discredit to the Laboratory, casts significant doubt on the employee's reliability or trustworthiness, or otherwise materially affects an employee's ability to work effectively or harmoniously with others is improper. This includes arrests or convictions related to illegal substances or substance abuse off site.

### **II.5.1. Written Warnings**

- a. A supervisor may give an employee a written warning, with department head/division leader approval, of unsatisfactory conduct or performance. Such written warning shall include
  - i. A statement of the nature of the offense or misconduct, or of the deficiency in job performance. (Be specific.)
  - ii. A statement of any action on the part of the employee needed to improve conduct or



performance including, when appropriate, the time period in which the employee is expected to bring conduct or performance up to standard.

iii. A statement of the most severe action that may or might be taken should conduct or performance not improve.

iv. A statement of the employee's right to request review of the action under [Section H, "Grievances and Administrative Review."](#)

b. The original of the written warning shall be given to the employee; one copy shall be placed in the employee's departmental file; and one copy shall be sent to the Human Resources Manager for inclusion in the Personnel Operations Division's employee file. No other copies shall be made. The department head/division leader and the Human Resources Manager shall be responsible for destroying the written warning two years from the date it was issued, unless otherwise required by law, provided that there have been during that two-year period no further corrective actions similar or related to the original incident.

## **II.6. Personal Property**

Personal property cannot be brought to the Laboratory for the purpose of making repairs or adjustments. The following types of personal property are expressly forbidden except as required for the performance of assigned duties: firearms, explosives, cameras, incendiary devices, alcoholic beverages, controlled substances, and other items similar in effect and purpose to any of the above.

## **II.7. Salary Attachments**

Salary attachments may reflect adversely on the employee and the Laboratory.

## **II.8. Personal Relationships**

Employees should ensure that advantages are not taken because of personal friendships or near-relative relationships. Such relationships should not affect work associations of supervisors or other employees.

## **II.9. Telephone Calls**

Necessary local telephone calls of a personal nature from Laboratory extensions are permitted but should be kept to a minimum to keep the telephone lines open for Laboratory business. Public telephones are located in various areas for employees' convenience.





Employees may not charge personal toll calls to the Laboratory, or use the Federal Telecommunications System (FTS) for personal calls. Employees are to bill personal toll calls to their residence telephone or credit card, call collect, or use a public telephone.

In addition, refer to the Laboratory Telephone Directory.

## **II.10. Safety**

The observance of all safety practices, rules, and regulations is the responsibility of all employees. This includes abiding by the instructions given in the line of duty by firefighters, protective service personnel, and Hazards Control personnel.

Detailed information on the Laboratory's safety program can be found in the [Health and Safety Manual](#).

## **II.11. Use of Laboratory Property, Funds, and Time**

### **II.11.1. Property**

Employees may not appropriate any article of Laboratory property, including scrap and salvage material, for personal use. Supplies and equipment may not be taken off site except for official work and must be accompanied by an official pass. ([See Section F in the Administrative Policies and Procedures Manual](#).)

Property means tangible property: land, facilities, tools, materials, equipment, and all such things of intrinsic value. Unauthorized use of property includes, but is not limited to the following:

- Using materials or facilities to repair privately owned appliances, vehicles, and the like.
- Using equipment, tools, stationery, or official vehicles for personal purposes.
- Using Laboratory property for outside business.
- Improperly using property made or being made under contract to the Laboratory or DOE.
- Using Laboratory property or time to solicit political organization membership or to engage in any activity involving support of or opposition to political candidates or issues.
- Misappropriating materials by falsifying or causing to be falsified such documents as purchase orders, stores requisitions, material passes, or by any other direct or indirect means, including theft.





- Conducting tests, studies, or investigations for private commercial purposes unless approved as "work for others" by the Laboratory Associate Director for Administration and Operations.
- Soliciting money on Laboratory property for projects not directly connected with an authorized activity.

Employees are required to take adequate care of all property in their custody and to protect equipment and materials from loss or damage, including misuse or misappropriation.

## **II.11.2. Funds**

Employees shall not appropriate Laboratory funds and are responsible for abiding by all procedures and regulations concerning the use of Laboratory funds. They shall not falsify or cause to be falsified any official documents such as, but not limited to, time cards and travel vouchers.

## **II.11.3. Time**

Employees are responsible for observing working hours established by their department/division in accordance with Laboratory policies. Improper use of working time includes any use of Laboratory time for non-Laboratory work.

Employees are responsible for informing their department/division as soon as possible if they will be late for or absent from work. Repeated tardiness and unexcused absences are an abuse of scheduled work time.

In addition, [refer to Section D.II.11.1.](#)

## **II.11.4. Official Vehicles**

Vehicles furnished by the University or the Government for official use are to be used solely for that purpose. They may not be used by employees for personal convenience or benefit. An employee who misuses an official vehicle may be prosecuted under State and Federal law. If an accident were caused by driver negligence during misuse of an official vehicle, the University and the Government might disclaim liability; the driver might have sole financial responsibility.

Employees are not to use an official vehicle to conduct personal business by stopping en route to or deviating from the direct route to the official destination. Use of an official vehicle as transportation between the work site and employees' residences may be approved when



- Employees' work requires a vehicle at or near their lodging so that they can respond to emergencies or expected off-hour calls.
- A vehicle is needed to perform special hauling or other services for the Laboratory from the working place to a location at, near, or en route to the lodging.
- Employees are required to leave for or return from a field trip unusually early or late.
- Special or emergency conditions, such as unexpected overtime, make it unreasonable to expect employees to use the normal mode of transportation.

An official vehicle may not be used for individual transportation to onsite cafeterias and parking lots, side trips for meals to satisfy a personal preference where the trip involves significant extra time or distance when other reasonable and adequate eating places are closer at hand, or local stops for personal shopping or other business even when the stops are on the direct route of travel for an official trip.

## **II.11.5. Rental Vehicles**

The same restrictions generally apply to rental vehicles as to official vehicles. There is one major difference: the rental agreement is a contract between the employee and the rental company. Therefore, employees are free to shop, take trips for personal convenience, etc., as long as they personally pay the costs for extra mileage, day charges, insurance, and the like.

However, the University self-insures the \$250 deductible provision to the collision insurance normally included in the rental agreement but only during use for official business; it does not apply during personal use. For this reason, employees should consider paying the additional fee for full insurance coverage if they intend personal use.

Also, the Laboratory expects employees to use public transportation rather than rental vehicles whenever reasonable.

## **II.12. Security Regulations**

Much of the Laboratory's work is classified. Employees are screened for security clearances of varying degrees, depending on the nature of their work and the information they will need. Identification badges or cards are coded by color and letters or symbols to indicate the degree of security clearance needed by employees for admittance to restricted areas to which they require access. The badge must be worn in plain sight while employees are in restricted areas. Lost badges must be reported immediately to the Safeguards and Security Department.



Classified information should be discussed only with personnel who have been properly cleared and who have the need to know. It should never be discussed in public or over the telephone.

Employees who are selected for job assignments that require a security clearance are expected to cooperate with the security investigation process in a timely manner.

Employees with outside employment or liaison assignments must be particularly careful in these regards. There are specific prohibitions against

- Willful or careless disclosure of classified documents, data, or materials to unauthorized persons.
- Willful or careless failure to observe the established regulations regarding the protection of such documents, data, or materials against accidental or deliberate disclosure to unauthorized persons.

Employees are required to report violations of law involving Laboratory property, funds, time, or classified information to their department head/division leader or the Safeguards and Security Department. Employees are also required to assist government agencies in investigating such violations.

In addition, refer to the *Manual of Security Regulations*.

## **II.13. Government Investigations**

Employees must notify the Safeguards and Security Department within ten working days of notification by any agency of local, state, or federal government that they are the subject of

- Any criminal investigation, or
- Any other official investigation involving potential improper use of information obtained during the course of employment, or potential improper actions taken during the course of employment.

## **III. Acceptance of Gifts and Favors**

Employees are not permitted to accept gifts, personal loans, advances, or other financial or personal gain from any source which might affect their judgment in the discharge of their duties. This restriction does not apply to

- Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting.



- Acceptance of modest entertainment, such as a meal or refreshments, in connection with attendance at widely attended gatherings sponsored by industrial, technical, or professional associations, or at public ceremonies in official capacity.
- Acceptance of unsolicited advertising or promotional material.
- Incidental transportation accepted in customary form on official business.
- Compensation for community service or civic activities.
- Other forms of compensation, such as royalties for material written for publication; honoraria for articles, talks, or speeches; and compensation for service on an advisory committee or panel, when such compensation is received in accordance with Laboratory policy.

## **IV. Use of the Names of the Laboratory and the University of California—Policy**

No employee may use the name "University of California" or "Lawrence Livermore National Laboratory" or abbreviations of these names to designate any business, social, political, religious, or other organization; or to suggest that any such organization is affiliated with, or favored, or opposed by the University or Laboratory; or to display either of these names in connection with any political, social, religious, or economic activity. In particular, University or Laboratory stationery may be used only for official business.

### **IV.1. Commercial Products**

If a report generated by an employee contains a product evaluation, distribution is to be limited to DOE and its operating contractors. In practical terms, this means the report can be distributed freely within the Laboratory but not outside until cleared through the [Technical Information Department \(TID\) for review and release](#). It must not be distributed to individuals or organizations not associated with the Laboratory or DOE. Consult TID for details and particulars on what constitutes a "product evaluation."

Failure to comply with policy could be the cause of legal action against the University, accusation of preferential treatment, or unauthorized use of statements as advertising endorsements in the reports.

### **IV.2. Advertising**

Commercial firms employing Laboratory people or supplying equipment to the Laboratory sometimes want to use the Laboratory's name in advertising, brochures,



motion pictures, and other media. This is prohibited unless approved in advance by the Director's Office.

The Laboratory requires a copy of the proposed text illustrations, etc., for preliminary review and screening. If the request is denied, the requester is so notified. Passing the preliminary screening does not constitute Laboratory approval, for the material must also have patent, classification, and technical reviews as well as a final evaluation. The requester is advised as to the final decision.

## **IV.3. Official Laboratory Communications**

Only the Laboratory Director or his designees can speak for the Laboratory on any matter concerning Laboratory programs, policies, intentions, and commitments. In the case of specific programs, divisions, departments, or projects, the heads of those organizations are deemed to be the Laboratory Director's designees for their areas. Such official statements are part of the work responsibilities of the employees concerned and should be coordinated and cleared as appropriate with the Laboratory Director. All other statements on these matters are unofficial and must be clearly identified by employees as not being official positions of the Laboratory, the University of California, or the U.S. Government. Information copies should be provided to the employees' supervisors.

## **V. Outside Employment–Policy**

Employees may engage in consulting, employment, or business activities outside Laboratory hours unless this creates or appears to create a conflict of interest, interferes with employees' performance of their Laboratory duties, or subjects the Laboratory to criticism or embarrassment.

Such activities must be approved by the Conflict of Interest Coordinator ([Request for Permission to Engage in Outside Business Activity, Form LL-2481](#)) before the start of work if they involve any of the following:

- Work in the energy field.
- Work for a government contractor or agency, or for a prime contractor to a government agency.
- Work for an organization whose activities are scientific or technical in nature.
- Work for another department of the University.
- Teaching for a college or university.



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- Work by fulltime employees averaging more than forty hours per month in addition to their Laboratory work.
- Work in a foreign country.
- Consulting of any type.
- Work on site for a contractor providing services to the Laboratory.
- Work for enterprises involved with technology developed at the Laboratory.

Foreign consultancies involving (a) the receipt of fees or reimbursement of expenses by a foreign government or other foreign entity and (b) potential conflicts of interest require specific advance approval by DOE.

Other outside activities need not be reported or approved if they are obviously unrelated to the Laboratory's interests. For example, the most likely unrelated activities are retail sales clerking, ranching, music, building construction, sales of non neighboring real estate, art, painting, and decorating.

New employees intending to continue relationships with other organizations which predate their Laboratory employment should attempt to resolve these matters before employment, if at all possible. Any such activity falling within the above criteria must be reported and approved, as described above. Preexisting activities might constitute a conflict of interest for employees in their new status as employees of the Laboratory and will be reviewed in that light.

### **V.1. General Guidelines**

Employees may engage in outside employment when there is no conflict of interest concern ([see Section D, Part VI](#)) and when the following criteria are met:

- The outside work is performed away from the Laboratory, on an employee's own time and without the use of Laboratory facilities, telephones, equipment, services, or materials.
- The outside work does not impair employee's ability to carry out his/her regular Laboratory duties effectively.
- The outside activity does not interfere with the employee's Laboratory work.
- The time is charged to leave without pay or vacation.
- The use of vacation leave to engage in outside employment is not excessive, and the employee has sufficient vacation leave to use for its intended purpose of rest and recreation.



- The employee is not on educational leave.
- The work for another government contractor is so arranged that the Government does not pay twice for the same working hours or the same task.
- When the work is for another University location, the time is charged to leave without pay.

## **V.2. Work for DOE and Other Government Agencies**

Work for DOE and its prime contractors is normally considered part of the employee's work assignment. Requests for service to other government agencies, or to serve on boards or committees of these agencies, require a Laboratory decision as to whether the work will be part of the employee's regular assignment or considered to be outside employment or consulting.

## **V.3. Work for the University**

Advance approval is required for any teaching or nonteaching work for the University.

### **V.3.1. Academic Appointees**

The work time of employees holding joint academic appointments (professors, lecturers, etc.) is adjusted according to the percentage of time of the academic appointment.

### **V.3.2. Extension Division Courses**

Employees are encouraged to teach extension courses, subject to agreement between the employee and the Extension Division. Each such agreement must be approved ([Request for Permission to Engage in Outside Business Activity, Form LL-2481](#)) in advance. Pay arrangements are as follows:

- If the employee teaches outside of Laboratory working hours, the agreement is between the employee and the Extension Division; the Laboratory is not involved.
- If the employee's teaching (including summer institutes) is during working hours but does not exceed twelve hours per month, the time can be charged to work time. The employee's teaching pay, agreed to between the employee and the Extension Division, is extra compensation. This arrangement requires endorsement by the employee's department head/division leader and approval by the Human Resources Manager. Employees must continue to fulfill their normal work assignments.



- If the employee's teaching during working hours (including summer institutes) exceeds twelve hours per month, then all such time must be taken as leave without pay or as a reduction in Laboratory working hours.

### **V.3.3. Nonteaching Work**

Normally, a fulltime employee who performs nonteaching work for the University remains on the Laboratory payroll, and the University reimburses the Laboratory for all costs. Dual employment for an employee may be approved ([Request for Permission to Engage in Outside Business Activity, Form LL-2481](#)) under the following conditions:

- a. It is impractical for the University to employ another person.
- b. The additional employment will not exceed a total of twelve calendar months.
- c. The time worked on the additional employment will not be detrimental to the employee's health or affect the employee's total performance adversely.
- d. The employee's department head/division leader agrees to the arrangement.

### **V.4. Business Ownership**

Ownership of a business by an employee or near relative must be reported if the business proposes to sell any type of product or service to the Laboratory. Review of the potential for conflict of interest is especially important in these cases. ([See Section D, Part VI.](#))

A near relative is defined as the employee's spouse, registered domestic partner , children, children of registered domestic partner , parents, brothers, sisters, in-laws, or step relatives in the same relationship

### **V.5. Foreign Consultancies**

Consultancies outside the U.S. that involve the payment of salary, fees, or any other kind of expense reimbursement or gratuity by a foreign government or other foreign entity must be approved in advance by DOE.

This regulation also applies to the exchange of information by Laboratory employees for remuneration in any form. Travel expense reimbursements are considered remuneration. The regulation specifically applies to consultancies outside the U.S. that are financed by American (U.S.) organizations.

DOE has asked the Laboratory to submit requests for approval at least ten days prior to the expected action date, whenever possible. Requests including at least the following information are to be sent to the Director's Office:





- a. Subject matter of the consultancy or discussion.
- b. Type and amount of remuneration.
- c. Name of the employee.
- d. Cities and/or institutions to be visited.
- e. Relevant dates.
- f. Extent of the employee's access to classified information.

Foreign travel by Laboratory employees also requires prior approval, well in advance of departure.

## **V.6. Consulting Agreements for Employees**

A consulting agreement between an employee and an outside firm, organization, or institution must have the approval of the supervisor, the department head, and the Conflict of Interest Coordinator.

Employees asked to sign a consulting agreement containing any claim for rights to inventions, patents, or proprietary data must advise the outside organization that Laboratory approval of the agreement requires the inclusion of a statement granting precedence to the Laboratory, DOE, and the University in these matters over the rights of the outside organization.

This statement must be in the following language:

It is recognized that Consultant is a fulltime employee of the University of California engaged in certain work conducted by the University at the Lawrence Livermore National Laboratory under [Contract W-7405-ENG-48](#) with the Department of Energy (DOE), that the University has prior rights to Consultant's services for said work, and the Consultant has prior patent obligations to the University and DOE under a patent agreement with the University.

It is expressly understood and agreed that the respective rights of the University and DOE are prior to and take precedence over any rights of the Company hereunder and the Company shall not be entitled to any rights or licenses, except as granted or approved by the University and DOE, in any invention or discovery within the scope of said patent agreement. Whenever any invention or discovery is made, conceived or developed by Consultant, solely or jointly, under this Consulting Agreement, the Company shall promptly furnish the University and DOE with information thereon sufficient for the purpose of affording timely resolution of whether the invention or discovery is within the purview of said agreement.



It is recognized that under [Contract W-7405-ENG-48](#) between the University and DOE, the Consultant has an obligation to report to the University and DOE any technical data involved in the course of or under said Contract. This obligation on data takes precedence over any obligation on data under this agreement.

## **V.7. Classified Information**

Employees involved in outside employment must observe the Laboratory's requirements about safeguarding classified information.

Refer to the *Manual of Security Regulations*. for more information.

## **VI. Conflict of Interest–Policy and Definition**

A conflict of interest exists when employees' consulting or business activities outside the Laboratory could influence their judgment in their Laboratory assignment or give an unfair competitive advantage to their client or outside employer. The Laboratory is obligated by the contract between the University and DOE to avoid conflict-of-interest situations and to report any such conflict or apparent conflict to DOE. The Laboratory has appointed a Conflict of Interest Coordinator who is responsible for assisting employees in avoiding conflicts.

Employees could find themselves in an apparent or real conflict-of-interest situation as a result of many different kinds of circumstances. They might find, for example, that in the course of their regular Laboratory duties they become involved with a purchase contract or other agreement with an organization with which they have a consulting, employment, or significant financial interest. They could become aware of information relating to future Laboratory purchases, equipment or supply needs or specifications, or progress of research or development at the Laboratory which could be of benefit to the outside organization with which they are associated. They could, in their Laboratory assignment, make or influence decisions relating to the Laboratory's activities that could benefit them in their activities, or benefit an organization with which they have a consulting, employment, or significant ownership interest. They could be working with a consultant to the Laboratory whose employer or other clients could benefit from information available at the Laboratory but not generally available to the public.

Allegations of conflict of interest may come from third parties, such as competitive vendors.

In these and similar circumstances, employees should be aware of possible conflict of interest. Outside activity must not be undertaken if a conflict of interest exists or seems to exist. It must not be continued if any conflict or potential conflict arises after the activity has been approved by the Laboratory. The damage to the University, the Laboratory,



DOE, and the employees themselves could be as serious from an action that appears improper as from one that is in fact improper.

Many organizations that retain Laboratory employees as consultants or part-time employees, particularly agencies and departments of the U.S. Government, have their own rules and regulations about conflict of interest. The regulations of government agencies are reinforced by criminal statutes. It is always wise for employees to familiarize themselves with these regulations before entering into consulting or employment relationships.

Employees who consult or work for government contractors must be careful to arrange their work so that the Government does not pay twice for the same working hours or the same task.

## **VI.1. Purchases from Employee–Connected Firms**

The Laboratory keeps a record of business firms known to have hired Laboratory employees part time or retained them as consultants, as well as firms in which Laboratory employees or their near relatives (spouse, registered domestic partner, children, children of registered domestic partner, parents, brothers, sisters, in-laws, or step relatives in the same relationships) have an active ownership interest.

This record is compiled from the [\(Request for Permission to Engage in Outside Business Activity, Form LL-2481\)](#) submitted by employees. A form must be submitted at the time of a possible business transaction, even if it was not originally required by the nature of the business.

Proposed business transactions between the Laboratory and its employees or employee-connected firms are reviewed to determine if a real or potential conflict of interest is likely. Employees must certify that they have no connection with Laboratory actions related to the transaction, and that no unauthorized Laboratory time, equipment, materials, or facilities will be used to perform the transaction. The form is approved by the employee's supervisor and department head/division leader and forwarded to the Conflict of Interest Coordinator, who must make a determination that there is no possible conflict of interest before approving any transaction with an employee-connected firm.

## **VI.2. Employees in Civic and Community Organizations**

In their role as private citizens, employees may act in support of or opposition to public policies or legislation, including presentation of testimony before legislative committees or government agencies. However, they must avoid the appearance of acting in the name of the Laboratory or the University.



Employees may be candidates for and serve in elective and appointive government positions if the activity does not interfere with their Laboratory duties. They must be careful to avoid any possible conflict of interest when matters affecting the Laboratory are presented to them for consideration.

## **VI.3. Conflict of Interest Code**

A Conflict of Interest Code has been developed by the University under provisions of the State of California Political Reform Act of 1974. The Code requires

- All employees to disqualify themselves from making or participating in making or influencing a decision that the employees know, or have reason to know, will have a material financial effect on their financial interests.
- Employees in "designated positions," as defined by the Act, to file "Financial Disclosure Statements" within thirty days after the position has been designated and when appointed to or separated from such positions, and annually, thereafter, on April 1.

Principal investigators in scientific research projects must file Form 730 when their research project receives private, nongovernmental and non charitable funding or donations in excess of \$250. A filing is required at the time application is made for initial funding, when there is renewal or change in the research project, and upon the project's completion.

In making a filing, principal investigators have to declare the following for themselves, a spouse, a registered domestic partner, or a dependent child:

- All investments in excess of \$1,000 with the sponsoring private business.
- Any income in excess of \$250.
- Gifts worth \$25 or more.
- Outstanding loan balances exceeding \$250 over the prior 12 months.
- Any management position held in a private company funding Laboratory work.

In addition, refer to "Standards of Conduct in Conflict of Interest Situations-A Guide for Supervisors," the "Political Reform Act Disqualification Requirements" (July 1988), and the "University of California Conflict of Interest Code" (available from the LLNL Conflict of Interest Coordinator).

## **VII. Patents and Reporting Discoveries**



The Patent Agreement signed as a condition of employment at the Laboratory requires that all novel ideas, discoveries, and inventions in which an employee participates be reported to DOE and the University Board of Patents, which will act on them accordingly. Employees must report ideas, discoveries, and inventions, even if not related to Laboratory work, to avoid possible future patent conflicts.

Technical reports, drawings, and other publications originating at the Laboratory must be screened by the Patent Office and TID before they are taken or sent outside the Laboratory to ensure that patent and security requirements are met.

The Patent Agreement, in brief, gives DOE sole power to determine ownership and disposition of inventions and discoveries conceived "in the course of or under the terms of" the contract. Thus the Laboratory's Patent Office rules first. Inventions and discoveries that DOE does not wish to patent go to the University Board of Patents for consideration. The employee will be advised of the Board's determination.

Because of these prior commitments, employees may not sign a patent agreement with an outside organization without prior Laboratory approval of the exact wording. ([See Section D.V.6.](#))

## **VIII. Privileged Information—Policy and Definition**

Privileged information must be held in confidence until released to the public.

Privileged information includes scientific and technical information of many kinds; possible new sites for program operations; knowledge relating to selection of suppliers, contractors, or subcontractors; patent, proprietary, medical, personnel, security, and financial information, and the like.

The use of privileged information for personal financial gain is prohibited.

### **VIII.1. Releasing Technical Information**

Scientific, technical, or other information developed at the Laboratory must not be released to anyone outside the Laboratory until approved (reviewed and released) by the Classification Office, the Patent Office, and the Director's Office or made available to the general public. The information must not be used by employees in their private business or in consulting for a client until cleared or made public.

### **VIII.2. Public Statements, News Releases**

Public statements and news releases are issued only through the Director's Office. Any employee who is questioned on any Laboratory matter by the press should refer the question to the Director's Office. Employees engaged in outside activity may



occasionally be expected to make public statements in behalf of their clients or outside employers and may be interviewed by representatives of news media. It must be made clear that comments are personal or in behalf of the outside employer but do not represent the position of the Laboratory. This is particularly true if the employee might be identified in any way with the Laboratory.

### **VIII.3. Court and Other Testimony**

Laboratory employees sometimes are subpoenaed or asked to testify in judicial, legislative, or administrative proceedings involving the University from an authority other than the University. Employees must promptly notify the Principal Laboratory Associate Director, giving the name of the authority who issued the subpoena or order; the time, place, and general nature of the hearing; the names of the parties involved, if applicable; and the nature of the testimony or Laboratory records required.

Unless the testimony is authorized by the Director's Office, employees may not testify with respect to any Laboratory matter in such a hearing other than the fact, nature, and duration of their employment, and they are not allowed to produce in evidence any Laboratory records or documents.

### **VIII.4. Protecting Proprietary Information**

Normally the Laboratory cannot agree to protect from public release information that may be considered by an individual or firm doing business with the Laboratory as proprietary information. This may include trade secrets, patented or copyrighted information, and similar data.

Only when determined by the Director's Office to be necessary for programmatic reasons will the Laboratory agree to try to protect such information; even so, the obligation will be limited to the exercise of best efforts without liability to the University.

### **VIII.5. Use of Copyrighted Material**

Laboratory employees are obligated to comply fully with Federal copyright laws. See the Main Library Manager for the [proper procedures for reproducing copyrighted material](#).

## **IX. Procedure to Implement UC Whistleblower Policy**

### **I. Purpose**

This Procedure implements the University of California Whistleblower Policy (UC Whistleblower Policy) at the Laboratory. The full text of the UC Whistleblower Policy is incorporated by reference and is set forth in [Appendix A](#) to Section D of the Laboratory's



Personnel Policies & Procedures Manual (PPPM) for the convenience of Laboratory employees.

The University's and the Laboratory's internal controls and operating procedures are intended to detect and to prevent or deter improper activities. However, even the best systems of control cannot provide absolute safeguards against irregularities. Intentional and unintentional violations of laws, regulations, policies and procedures may occur and may constitute improper governmental activities. Laboratory employees and others are encouraged to use the guidance provided in the UC Whistleblower Policy ([Appendix A to Section D](#)) and this Procedure for reporting all allegations of suspected improper governmental activities.

This Procedure also implements the Laboratory's obligations as a Federal Contractor to notify employees of their right to report suspected fraud, waste, or abuse; to forward such reports, as appropriate, to local law enforcement or to the Federal Government in accordance with applicable Federal procedures; and to conduct investigations and take action as appropriate.

## **II. Reporting Improper Governmental Activity at the Laboratory**

As provided in applicable law and the [UC Whistleblower Policy](#), any Laboratory employee, applicant, or other person has the right to make a protected disclosure (Part II.C UC Whistleblower Policy) to an appropriate authority (Part III.A.5. UC Whistleblower Policy) of suspected improper governmental activity (Part II.B. UC Whistleblower Policy) in the form and to the persons or offices identified in this Section.

### **II.1. UC Policy Definitions**

The entire text of definitions set forth in Part II of the [UC Whistleblower Policy](#) and in Part II of the [UC Whistleblower Protection Policy](#) are incorporated by reference into this Procedure. The following definitions from these parts and certain other explanatory material are set forth in this section for the convenience of and to aid in the understanding of Laboratory employees.

#### **II.1.1. University Resources (Part II.A. [UC Whistleblower Policy](#))**

"University resources" is defined to include, but not be limited to the following, whether owned by or under the management of the University:

- Cash and other assets, whether tangible or intangible; real or personal property
- Receivables and other rights or claims against third parties
- Intellectual property rights
- Effort of University personnel and of any non-University entity billing the University for its effort
- Facilities and the rights to use University facilities





- The University's name; and
- University records, including student and patient records

## **II.1.1.1. Laboratory-Specific Definition**

For the purposes of this Procedure, "University Resources" as defined in [Section D.IX.II.1.1](#) above also includes state or federal government property managed by the Laboratory and "University" includes the Laboratory.

## **II.1.2. Improper Governmental Activity (Part II.B. [UC Whistleblower Policy](#) and Part II.A. [UC Whistleblower Protection Policy](#))**

An improper governmental activity is any activity undertaken by the University/Laboratory or by an employee that is undertaken in the performance of the employee's official duties, whether or not that action is within the scope of his or her employment, and that

1. Is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property including facilities, or willful omission to perform duty; or
2. Is economically wasteful, or involves gross misconduct, gross incompetence, or gross inefficiency.

## **II.1.3. Protected Disclosure Defined (Part II.C. [UC Whistleblower Policy](#); Part II.B. [UC Whistleblower Protection Policy](#))**

A protected disclosure is any good faith communication that discloses or demonstrates an intention to disclose information that may evidence (1) an improper governmental activity or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

### **II.1.3.1 Good Faith Communication Defined (Part VI.A.I. [UC Whistleblower Policy](#))**

A good faith communication is one in which the person making the report has a reasonable belief that an improper governmental activity has occurred or that a condition exists which may significantly affect the health and safety of employees or the public.

### **II.1.3.2. Consequences of Intentional False Report (Part VI.A.I. [UC Whistleblower Policy](#))**

A Laboratory employee who intentionally makes a false report of improper governmental activity is subject to discipline up to and including dismissal, in accordance with applicable Laboratory policies.





## **II.2. Locally Designated Official (LDO) (Part II.F. and Part III.B [UC Whistleblower Policy](#))**

The Laboratory Director has appointed the Deputy Director – Operations as the Locally Designated Official (LDO). The LDO is the Laboratory official with the primary responsibility to receive reports of allegations of suspected improper governmental activities.

## **II.3. Offices and Persons to Whom Reports Can Be Made**

### **II.3.1. Making Anonymous Reports**

An employee, applicant, or other person may make an anonymous report of suspected improper governmental activity by means of the [UC Alert Line Ethics and Compliance Hotline](#) (1-800- 403-4744). This service, operated independently of the University and the Laboratory, assures anonymity by assigning a case number to each caller and acting as an intermediary for the institution. Callers need not identify themselves, but can still receive information about the disposition of their reported matters by making subsequent inquiries using the case number. Anonymous reports can also be made through the [California Bureau of State Audits Hotline](#) (1- 800-952-5665) and the [Department of Energy Hotline](#) (1-800-541-1625). Anonymous written reports may be addressed to the Laboratory Deputy Director -- Operations (see also Section [D.IX.II.2.](#))

### **II.3.2. Laboratory Employees (Part III.A.4 and .7 of the [UC Whistleblower Policy](#))**

Laboratory employees may make reports of suspected improper governmental activity to any of the following:

- a. The employee's immediate supervisor, or, in the interest of confidentiality, when there is a potential conflict of interest or for other reasons, to another Laboratory official whom the employee reasonably expects has either responsibility over the affected area or the authority to review alleged improper governmental activities on behalf of the Laboratory;
- b. An appropriate administrator or other appropriate supervisor within the employee's operating unit;
- c. The LDO;
- d. The Associate Director, Administration & Human Resources
- e. The Staff Relations Division Leader;
- f. The Laboratory Audit and Oversight Department;
- g. The Laboratory Office of Investigative Services;
- h. The University of California (UC) Auditor;
- i. The University of California Alert Line Ethics and Compliance Hotline (1-800-403-4744);
- j. The California Bureau of State Audits; or



- k. Any office designated by the Federal government to receive reports of improper governmental activity.
- l. If the report of suspected improper governmental activity involves the Staff Relations Division Leader, the Associate Director – Administration & Human Resources, the LDO, or the Laboratory Director, the employee may file the report directly with the UC Senior Vice President– Business & Finance. If the alleged improper activities involve the Senior Vice President— Business and Finance or the UC President, the report may be made to the UC Auditor.

### **II.3.2.1. Duties of Laboratory Employees Who Receive Reports of Improper Governmental Activities (Part III.B.2 and .3 [UC Whistleblower Policy](#))**

Laboratory managers, supervisors and administrators who receive reports alleging suspected improper governmental activities shall ensure that the matter is promptly reported to their supervisor, to an appropriate Laboratory manager and/or to the LDO, in accordance with Part III.B.2 and .3 of the [UC Whistleblower Policy](#).

### **II.3.3. Applicants and Other Persons Who are Not Laboratory Employees (Part III.A.3. [UC Whistleblower Policy](#))**

For the convenience of applicants for Laboratory employment and other persons who are not Laboratory employees, the Laboratory has identified the Staff Relations Division Leader as an appropriate Laboratory official to receive their reports of suspected improper governmental activities. Such persons may also make their reports to the offices identified in [Section D.IX.II.3.2.c. – l.](#) above or to any other Laboratory or University official whom the persons may reasonably expect to have either responsibility over the affected area or the authority to review the alleged improper governmental activity on behalf of the Laboratory or University.

### **II.4. Confidentiality of Reports (Part III.C.6.[UC Whistleblower Policy](#))**

To the extent possible, and within the limitations of law and the UC Whistleblower Policy and the need to conduct a competent investigation, confidentiality of whistleblowers, subjects of investigation, and participants in investigations will be maintained by the Laboratory and the University. However, whistleblowers, subjects, and participants are cautioned that their identity may become known for reasons outside of the control of the investigators or Laboratory or University administrators.

### **II.5. Form of Report (Part III.A.2. and B.2. of the [UC Whistleblower Policy](#))**

Reports of allegations of suspected improper governmental activities are encouraged to be made in writing so as to assure a clear understanding of the issues raised, but reports may be made orally. Oral reports will normally be documented by the Laboratory employee to whom the report is made so that there is a record of the report for investigation purposes. Reports should be factual rather than speculative or conclusory,



and contain as much specific information as possible to allow for proper assessment of the nature, extent and urgency of preliminary investigative procedures. An investigation of unspecified wrongdoing or broad allegations will not be undertaken without verifiable evidentiary support.

### **III. Protection From Retaliation and Interference**

The Laboratory has established the LLNL Whistleblower Retaliation Complaint Resolution Procedure at PPPM [Section D.XI](#) in accordance with the UC Whistleblower Protection Policy (see Appendix B to this section of the Personnel Policies & Procedures Manual) to provide an internal means of addressing allegations of interference with making a protected disclosure or retaliation for having made a protected disclosure or for having refused to obey an illegal order, as defined in the [UC Whistleblower Policy](#). However, the right to protection from retaliation does not extend immunity for any complicity in the matters that are the subject of the protected disclosure or an ensuing investigation (Part VI.A.7 [UC Whistleblower Policy](#)).

### **IV. Investigation of Improper Governmental Activity**

Under Part I of the UC Whistleblower Policy, the Laboratory retains the right to determine when circumstances warrant an investigation and the particular investigative body responsible for the investigation. The Laboratory has established an Investigations Workgroup (“I-Group”) to review allegations and coordinate investigation of complaints of improper governmental activities and has adopted procedures for the I-Group that have been endorsed by the University as being in conformance with the [UC Whistleblower Policy](#).

#### **IV.1. Employee Rights and Responsibilities**

Part VI of the [UC Whistleblower Policy](#) describes in detail the roles, rights and responsibilities of whistleblowers, investigation participants, subjects of investigations, and investigators who are Laboratory employees. Certain provisions of Part VI are described below for the convenience of and to aid in the understanding of Laboratory employees.

##### **IV.1.1. Whistleblowers**

Laboratory employees who make a report of suspected improper governmental activities (“whistleblowers”) have a responsibility to be candid with the LDO, with investigators or with others to whom they make a report of alleged improper governmental activities. Laboratory employees shall set forth all known information regarding any reported allegations. They shall refrain from obtaining evidence for which they do not have a right of access. Such improper access may itself be considered an improper governmental activity. Whistleblowers will be informed of the disposition of their disclosure absent overriding legal or public interest reasons.



## **IV.1.2. Participants**

Laboratory employees who are interviewed, asked to provide information or otherwise participate in an investigation have a duty to fully cooperate with authorized investigations. Participants should refrain from discussing or disclosing the investigation or their testimony with anyone not connected with the investigation. In no case should the participant discuss with the investigation subject the nature of evidence requested or provided or testimony given to investigators unless agreed to by the investigator.

## **IV.1.3. Subjects**

### **IV.1.3.1. Investigation Is Not Accusation**

The Laboratory and/or University decision to conduct an investigation is not an accusation against the subject of the investigation. The investigation is a neutral fact-finding process. The outcome of the investigation may or may not support a conclusion that an improper governmental act was committed and, if so, by whom.

No allegation of wrongdoing against a subject will be considered sustained unless, at a minimum, a preponderance of the evidence supports the allegation.

### **IV.1.3.2. Duties**

Subjects who are Laboratory employees have a duty to cooperate with authorized investigations. This duty shall not infringe the subject's self-incrimination protections in criminal cases. Subjects also have a responsibility not to interfere with the investigation and to adhere to admonitions from investigators. This responsibility includes both evidence, which shall not be withheld, destroyed or tampered with, and witnesses, who shall not be influenced, coached or intimidated.

### **IV.1.3.3. Consultation and Representation**

Subjects who are Laboratory employees have a right to consult with a person or persons of their choice. This may involve representation, including legal representation. Subjects may submit a request to the Staff Relations Division Leader for the Laboratory to pay or reimburse the subject's attorney's fees. Such requests will be considered consistent with statutory law, case law, and Laboratory and University practice, but UC Policy creates no entitlement to such payments or reimbursements.

Subjects who are Laboratory employees may also consult with Lab Counsel's Office or the University's Office of the General Counsel concerning the investigation. Lab Counsel's Office, which represents the Laboratory, and the Office of the General Counsel, which represents the interests of the University, will provide legal advice to the subject regarding issues in the investigation unless a divergence of interest prevents it from doing so. If legal services are provided to the subject by Lab Counsel's Office or the Office of the General Counsel, the attorney-client privilege cannot be invoked by the



subject to prevent disclosure to the Laboratory or the University of information obtained by the attorney providing the services.

#### **IV.1.3.4. Investigation Outcome**

Subjects have a right to be informed of the outcome of the investigation. If allegations are not sustained, the subject should be consulted as to whether public disclosure of the investigation results would be in the best interest of the Laboratory and/or University and the subject.

#### **IV.1.3.5. Disciplinary or Corrective Action**

Any disciplinary or corrective action initiated against the subject as a result of an investigation will be initiated in accordance with Laboratory policies applicable to the subject.

## **X. Procedure to Implement UC Whistleblower Protection Policy**

### **I. Purpose**

This Procedure implements the University of California Whistleblower Protection Policy ("[UC Whistleblower Protection Policy](#)") at the Laboratory. The full text of the UC Whistleblower Protection Policy is set forth in Appendix A to Section D of the Laboratory's Personnel Policies & Procedures Manual (PPPM).

The UC Whistleblower Protection Policy is derived from the California Whistleblower Protection Act (Government Code Sections 8547-8547.12). Under this Act, a University employee may not (1) retaliate against an employee or applicant for employment who has made a protected disclosure or who has refused to obey an illegal order, nor (2) directly or indirectly use or attempt to use the official authority or influence of his or her position or office for the purpose of interfering with the right of an applicant or an employee to make a protected disclosure, as defined in UC Whistleblower Protection Policy, Part II.

This Procedure also implements the Laboratory's obligations as a Federal Contractor, which similarly prohibits such retaliation and interference.

### **II. Intent**

It is the intention of the Laboratory to take whatever action may be needed to prevent and correct activities that violate the UC Whistleblower Protection Policy or the Laboratory's obligations as a Federal Contractor.



Appropriate management and/or corrective action, up to and including dismissal, will be initiated against any Laboratory employee found to have interfered or retaliated in violation of the UC Whistleblower Protection Policy or the Laboratory's obligations as a Federal Contractor.

### **III. Retaliation Complaint Resolution Procedure Established**

In conformance with the UC Whistleblower Protection Policy, the Laboratory has established a whistleblower retaliation complaint resolution procedure to address complaints by employees and applicants that they have been retaliated against or interfered with for making protected disclosures or refusing to obey illegal orders, as defined in the University of California Whistleblower Policy ([Appendix A to Section D](#)) or [UC Whistleblower Protection Policy](#) (Appendix A to Section D). This procedure, the LLNL Whistleblower Retaliation Complaint Resolution Procedure, is set forth at Section [D.XI](#) of the PPPM.

## **XI. Whistleblower Retaliation Complaint Resolution Procedure**

### **I. PURPOSE**

The University of California Whistleblower Protection Policy ("[UC Whistleblower Protection Policy](#)") requires each UC location to establish a whistleblower retaliation complaint resolution procedure in accordance with the terms of the UC Whistleblower Protection Policy. The full text of the UC Whistleblower Protection Policy is set forth in Appendix A to Section D of the Laboratory's Personnel Policies and Procedures Manual (PPPM). The University of California has endorsed this Laboratory Whistleblower Retaliation Complaint Resolution Procedure ("this Procedure") as meeting those requirements.

### **II. SCOPE**

This Procedure applies to complaints of retaliation or interference filed by Laboratory employees or applicants for Laboratory employment who have made or attempted to make a protected disclosure or have refused to obey an illegal order, as defined in the [UC Whistleblower Protection Policy](#).

### **III. DEFINITIONS**

Applicable definitions include both UC Policy definitions (see [Section D.IX.III.1.](#)) and Laboratory-specific definitions (see [Section D.IX.III.2.](#)).

#### **III.1. UC Policy Definitions**



All definitions set forth in Part II of the UC Whistleblower Policy and in Part II of the [UC Whistleblower Protection Policy](#) are incorporated by reference into this Procedure. The following definitions from the UC Whistleblower Policy and/or UC Whistleblower Protection Policy are set forth below with appropriate clarifications for the convenience of and to aid in the understanding of Laboratory employees.

### **III.1.1. University Resources (Part II.A. [UC Whistleblower Policy](#))**

“University resources” is defined to include, but not be limited to the following, whether owned by or under the management of the University:

- Cash and other assets, whether tangible or intangible; real or personal property
- Receivables and other rights or claims against third parties
- Intellectual property rights
- Effort of University personnel and of any non-University entity billing the University for its effort
- Facilities and the rights to use University facilities
- The University’s name; and
- University records, including student and patient records

### **III.1.2. Improper Governmental Activity (Part II.A. [UC Whistleblower Protection Policy](#))**

Any activity undertaken by the University or by an employee that is undertaken in the performance of the employee’s official duties, whether or not that action is within the scope of his or her employment, and that is either

1. In violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of University property including facilities, or willful omission to perform duty; or
2. Is economically wasteful, or involves gross misconduct, gross incompetence, or gross inefficiency.

### **III.1.3. Protected Disclosure (Part II.B. [UC Whistleblower Protection Policy](#))**

Any good faith communication that discloses or demonstrates an intention to disclose information that may evidence either (1) an improper governmental activity or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

#### **III.1.3.1. Good Faith Communication (Part VI.A.1. [UC Whistleblower Policy](#))**





A good faith communication is one in which the individual has a reasonable belief that an improper governmental activity has occurred or that a condition may significantly threaten the health or safety of employees or the public. The motivation of the individual making the protected disclosure is irrelevant to consideration of the validity of the allegations.

#### **III.1.4. Illegal Order (Part II.C. [UC Whistleblower Protection Policy](#))**

Any directive to violate or assist in violating an applicable federal, state, or local law, rule, or regulation or any order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

#### **III.1.5. Interference (Part II.D. [UC Whistleblower Protection Policy](#))**

Direct or indirect use of authority to obstruct an individual's right to make a protected disclosure.

#### **III.1.6. Official Authority or Influence (Part II.E. [UC Whistleblower Protection Policy](#))**

Promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

#### **III.1.7. Retaliation Complaint (Part II.F. [UC Whistleblower Protection Policy](#))**

Any written complaint together with a sworn statement made under penalty of perjury that the contents of the complaint are true or are believed by the complainant to be true made by an employee or applicant for employment which alleges retaliation for having made a protected disclosure or for having refused an illegal order or interference with an attempt to make a protected disclosure.

#### **III.1.8. Locally Designated Official (LDO) (Part II.F. [UC Whistleblower Policy](#), Part III.B. [UC Whistleblower Protection Policy](#))**

The person designated by each campus and Laboratory as the official with primary responsibility to receive reports of allegations of suspected improper governmental activities and to receive retaliation complaints and administer local implementing procedures. The LDO may be the same official designated to administer local procedures for investigating complaints of improper governmental activities.

#### **III.1.9. Retaliation Complaint Officer (RCO) (Part III.C. [UC Whistleblower Protection Policy](#))**





An individual or standing body that serves as Retaliation Complaint Officer(s) to oversee investigation of complaints filed by employees and applicants for employment alleging interference with or retaliation for making a protected disclosure or for refusing to obey an illegal order.

## **III.2. Laboratory-Specific Definitions**

### **III.2.1. University**

For the purposes of this Procedure, “University” includes the Laboratory.

### **III.2.2. University Resources**

For the purposes of this Procedure, “University Resources” includes state or federal government property managed by the Laboratory.

### **III.2.3. Complaint Resolution Procedures**

The two formal complaint resolution procedures available to eligible employees covered by Laboratory personnel policies are contained in [Section H](#) of the Laboratory’s Personnel Policies & Procedures Manual (PPPM). The Grievance Procedure is set forth in PPPM Section H.I and the Administrative Review Procedure is set forth in PPPM [Section H.II](#).

### **III.2.4. Factfinding**

At the Laboratory, “factfinding” as used in the UC Whistleblower Protection Policy in the context of a complaint resolution procedure is known as the Independent Party Review step under the Administrative Review Procedure, PPPM [Section H.II](#).

### **III.2.5. Current University Policy**

“Current University Policy” as used in this Procedure includes the UC Whistleblower Policy ([Appendix A to Section D](#)), the [UC Whistleblower Protection Policy](#) (Appendix A to Section D), the Laboratory Procedure to Implement UC Whistleblower Policy and the Laboratory Procedure to Implement UC Whistleblower Protection Policy.

## **IV. LOCALLY DESIGNATED OFFICIAL (LDO)**

### **IV.1.**

The Laboratory Director has appointed the Deputy Director – Operations as the Locally Designated Official (LDO) to receive retaliation complaints and administer local implementing procedures.



## IV.2.

The Laboratory has identified the Staff Relations Division Leader as the Laboratory official responsible for advising complainants of their rights to file retaliation complaints (see [Section D.XI.III.1.7](#)), of the Laboratory complaint resolution procedures that may be available to employees, and of the timeframes for filing and required elements of retaliation complaints.

## V. RETALIATION COMPLAINT OFFICER (RCO)

The Laboratory LDO has designated the Staff Relations Division Leader as the Laboratory Retaliation Complaint Officer (RCO). As the RCO, the Staff Relations Division Leader assigns, but does not conduct, and oversees, as appropriate, the investigation of retaliation complaints (see [Section D.XI.III.1.7](#)) filed by employees and applicants for employment that allege interference or retaliation for making a protected disclosure or for refusing to obey an illegal order. The term “RCO” is also used in this Procedure to include the person to whom the Staff Relations Division Leader assigns investigation of the complaint.

## VI. OFFICES WHERE COMPLAINTS MAY BE FILED

### VI.1. Applicants for Laboratory Employment

An applicant for Laboratory employment may file a retaliation complaint (see [Section D.XI.III.1.7](#)) directly with the Staff Relations Division Leader.

### VI.2. Laboratory Employees

A Laboratory employee may file a retaliation complaint (see [Section D.XI.III.1.7](#)) in accordance with one (1) of the following:

#### VI.2.1. The Employee’s Supervisor

Any employee may file a retaliation complaint (see [Section D.XI.III.1.7](#)) directly with his or her supervisor. A complaint filed with the supervisor will be referred by the supervisor to the Staff Relations Division Leader and will be processed in accordance with [Section D.XI.VII](#) and [D.XI.VIII](#) below.

#### VI.2.2. Staff Relations Division Leader

Any employee or applicant may file a retaliation complaint (see [Section D.XI.III.1.7](#)) directly with the Staff Relations Division Leader. The complaint will be processed in accordance with [Section D.XI.VII](#) below.



## **VI.2.3. PPPM Grievance/Administrative Review Procedure**

**VI.2.3.1.** Employees eligible to file grievances and administrative reviews under the Laboratory's Grievance and Administrative Review Policy (see [PPPM Section H](#)) may file a retaliation complaint (see [Section D.XI.III.1.7](#)) with the Staff Relations Division Leader as a Grievance or as an Administrative Review.

**VI.2.3.1.1.** Employees eligible to file a Grievance or Administrative Review who file their retaliation complaint unaccompanied by a sworn statement made under penalty of perjury that its contents are true or are believed to be true are cautioned that the retaliation provisions of the California Whistleblower Protection Act do not apply to persons whose retaliation complaints are not accompanied by such a sworn statement.

**VI.2.3.2.** Employees who are not eligible to file or whose grievances are not eligible to be filed under Section H of the PPPM - Grievances and Administrative Reviews, may file a retaliation complaint (see [Section D.XI.III.1.7](#)) as specified in [Section D.XI.VI.2.1](#) or [D.XI.VI.2.2](#) above, or, if eligible, as specified in [Section D.XI.VI.2.4](#) below.

**VI.2.4.** Collective Bargaining Agreement Grievance Procedure Employees in a unit covered by a collective bargaining agreement may file a retaliation complaint (see [Section D.XI.III.1.7](#)) with the Staff Relations Division Leader. Employees in a unit covered by a collective bargaining agreement who are not eligible to file grievances under the collective bargaining agreement or whose complaint is not eligible for processing under the collective bargaining agreement may file a retaliation complaint (see [Section D.XI.III.1.7](#)) as specified in [Section D.XI.VI.2.1](#) or [VI.2.2](#) above.

**VI.2.4.1.** Employees covered by a collective bargaining agreement who elect to file a grievance complaining of retaliation unaccompanied by a sworn statement made under penalty of perjury that its contents are true or are believed to be true are cautioned that the retaliation provisions of the California Whistleblower Protection Act do not apply to persons whose retaliation complaints are not accompanied by such a sworn statement.

## **VII. TIME FRAMES FOR FILING AND PROCESSING COMPLAINTS**

**VII.1.** A retaliation complaint filed directly with the employee's supervisor or with the Staff Relations Division Leader must be filed within 12 months of the alleged act or threat of interference or retaliation. If the complaint alleges a pattern of retaliation, the complaint must be filed within 12 months of the most recent alleged act or threat of interference or retaliation.

**VII.1.1.** The Staff Relations Division Leader will determine within thirty (30) calendar days of the filing of the complaint whether a complaint has been timely filed in accordance with this Procedure, unless an extension has been granted by the LDO (see Sections [XI.III.1.8](#). and [XI.IV.1.](#)).



**VII.2.** The Staff Relations Division Leader will determine within thirty (30) calendar days of the filing of the complaint whether the complaint is eligible for review under an existing complaint resolution procedure applicable to the complainant, unless an extension has been granted by the LDO (see [Sections XI.III.1.8.](#) and [XI.IV.1.](#)).

**VII.2.1.** If the complainant also elects to file under the applicable procedure, the Staff Relations Division Leader will hold the retaliation complaint in abeyance until all of the steps preceding hearing, arbitration under a collective bargaining agreement, or factfinding have been completed, at which point the retaliation complaint will be joined with applicable procedure and referred to the RCO for handling as described in [Section D.XI.IX](#) below.

**VII.2.2.** If the complainant elects not to file under the applicable procedure, the Staff Relations Division Leader will assign investigation of the complaint to an RCO once the time limits for filing under the applicable procedure have expired.

## **VIII. REQUIRED ELEMENTS OF COMPLAINT**

### **VIII.1. Written Complaint and Sworn Statement Required**

A retaliation complaint filed with the Staff Relations Division Leader must be in writing and must be filed together with a statement sworn under penalty of perjury that the contents of the complaint are true or are believed by the complainant to be true. The complaint must also set forth in sufficient detail the necessary supporting facts, including dates and names of relevant persons.

#### **VIII.1.1. Necessary Supporting Facts Defined**

In order for the complaint to be accepted, the complaint must contain facts supporting these filing thresholds:

- That the complainant filed a report or made a protected disclosure alleging improper governmental activities pursuant to current University policy; or
- That the complainant was threatened, coerced, commanded, or prevented by intimidation from filing a report of improper governmental activities; or
- That the complainant refused to obey an illegal order.

In addition, the complaint must describe in sufficient detail any alleged retaliatory acts and the alleged effects on the complainant of such retaliatory acts.

**VIII.1.2.** Unless an extension has been granted by the LDO (see [Sections XI.III.1.8.](#) and [XI.IV.1.](#)), the Staff Relations Division Leader will determine within thirty (30) calendar days of the filing of the complaint whether the complaint sets forth the necessary facts to support a claim of retaliation for having made a protected disclosure, having disobeyed an illegal order, or interference with the right to make a protected disclosure.



**VIII.1.3.** The Staff Relations Division Leader may require the complainant to amend the complaint to provide sufficient detail.

**VIII.1.3.1.** If the complainant does not amend the complaint to correct the insufficiencies identified by the Staff Relations Division Leader within thirty (30) calendar days of the date the Staff Relations Division Leader serves on the complainant notice to amend the complaint, or if the amended complaint does not correct the insufficiencies identified by the Staff Relations Division Leader, as determined by the Staff Relations Division Leader, the Staff Relations Division Leader may dismiss the complaint. The Staff Relations Division Leader may grant the complainant an extension of time within which to amend the complaint provided the complainant's request for an extension of time, together with the reasons therefore, is received by the Staff Relations Division Leader in writing within the thirty (30) calendar day period.

## **IX. INVESTIGATION**

**IX.1.** Unless an extension has been granted by the LDO (see [#D\\_11\\_6\\_2\\_1.](#) and [XI.IV.1.](#)), investigation of a complaint determined by the Staff Relations Division Leader to have been filed in accordance with this Procedure will be assigned by the Staff Relations Division Leader to a Retaliation Complaint Officer (RCO) and the RCO will commence the investigation within thirty (30) calendar days of the date of the Staff Relations Division Leader's determination whenever:

- The complaint is not within the scope of or filed within the time limits of the grievance or administrative review procedure available to the complainant under Laboratory personnel policy or collective bargaining agreement
- The complainant is an employee who is not eligible to use the grievance or administrative review procedures available under Laboratory personnel policy or collective bargaining agreement
- The complainant is an applicant for employment.

**IX.2.** When an employee files a complaint that contains an eligible allegation of retaliation under an existing Laboratory complaint resolution procedure, the assigned RCO will investigate the allegation of retaliation or interference as provided below:

**IX.2.1.** If the complaint is filed as an Administrative Review under [PPPM Section H.II.](#), the RCO will serve as the Independent Party.

**IX.2.2.** If the complaint is filed under the Grievance Procedure in [PPPM Section H.I.](#) or under the grievance procedure in a collective bargaining agreement, but is not eligible under that policy or collective bargaining agreement for hearing, the RCO will investigate the complaint after exhaustion of the available steps of the policy or collective bargaining agreement. The investigation and findings will be limited to the interference or retaliation aspect of the complaint only.



**IX.2.3.** If the complaint is filed under the Grievance Procedure in [PPPM Section H.I.](#) and is heard before a Laboratory Hearing Committee or non-University Hearing Officer, or if the complaint is filed under the grievance procedure in a collective bargaining agreement and is heard before an Arbitrator, the RCO will review a copy of the Hearing Committee's, non-University Hearing Officer's, or arbitrator's decision. If the decision does not include findings on alleged interference or retaliation, the RCO will ask the hearing officer, hearing committee, or arbitrator to revise the decision to include such findings. If the hearing officer, hearing committee, or arbitrator then fails to include such findings, the RCO will conduct a separate investigation on the issue of alleged interference or retaliation only.

**IX.2.4.** If a complaint otherwise eligible for investigation by a LLNL RCO alleges that the Laboratory Director, the LDO, the Associate Director – Administration & Human Resources, or the Staff Relations Division Leader interfered or took the retaliatory action, the Staff Relations Division Leader will ask the University of California Senior Vice President—Business and Finance to appoint a non- LLNL RCO to undertake the investigation consistent with the provisions of this Procedure.

### **X. Findings of Fact and Factual Conclusions**

**X.1.** Before findings of fact and factual conclusions are reached by the RCO, the RCO will provide the person(s) accused of interference or retaliation with a copy of the complaint and any amendments, along with the documents on which the RCO intends to rely in reaching findings.

**X.1.1.** The person(s) accused will be provided twenty (20) days in which to respond to the complaint by filing a written statement with the RCO. The Staff Relations Division Leader may grant the person(s) accused an extension of time within which to respond, provided the person(s) accused make a written request, together with the reasons therefore, within the twenty (20) calendar day period.

**X.1.2.** The RCO will make the written statement part of the record submitted to the Laboratory Director.

**X.2.** The RCO will present both the findings of fact based on the evidence and factual conclusions to the Laboratory Director within 120 days from the date on which the complaint was assigned to the RCO, unless an extension has been granted by the Staff Relations Division Leader.

**X.2.1.** If the complaint has been investigated by a RCO, the RCO will find sufficient facts concerning the standard of proof provided for in [Section D.XI.XI](#) below so that the Laboratory Director is able to make an appropriate decision.



**X.2.1.1.** The Laboratory Director may remand the findings of fact and factual conclusions to the RCO if the Laboratory Director determines that further investigation is needed before making a decision.

**X.2.2.** If the complaint has been heard under policy or collective bargaining agreement before a Laboratory or non-Laboratory hearing officer or committee, the RCO will receive a copy of the decision. If appropriate findings are not included in the decision, as determined by the RCO, the RCO will ask the hearing officer or committee to include the appropriate findings. If such findings are not included in the decision to the RCO's satisfaction, the RCO will conduct a separate investigation with regard to any alleged interference or retaliation and will present findings of fact and factual conclusions to the Laboratory Director for decision.

**X.2.3.** In the case of an investigation conducted by a non-LLNL RCO appointed under [Section D.XI.IX.2.4.](#) above, the RCO's findings and conclusions will be presented to the UC Senior Vice President--Business and Finance within 120 days from the date on which the complaint was assigned to the non-LLNL RCO unless an extension has been granted by the Senior Vice President. The Senior Vice President will make the decision in accordance with this Procedure.

**X.3.** When an employee has filed a complaint under an applicable personnel policy or collective bargaining agreement that does not qualify as a retaliation complaint under the California Whistleblower Protection Act but which (1) alleges retaliation for an action which is protected by the [UC Whistleblower Protection Policy](#) (Appendix B to Section D) and (2) a final University decision within the meaning of the applicable policy or collective bargaining agreement has been rendered, the following procedures shall apply if the employee later files a timely retaliation complaint that complies with the above statute (see [Section D.XI.III.1.7.](#)).

**X.3.1.** If there is a finding of retaliation in the decision, the RCO shall review the decision to ensure that the remedy is consistent with the [UC Whistleblower Protection Policy](#) (Appendix B to Section D), and if not, the RCO shall make a recommendation to the Laboratory Director.

**X.3.2.** If there is no finding of retaliation in the decision, the LDO or designee shall request that the hearing officer, committee or arbitrator reopen the case to apply the standard of proof specified in [Section D.XI.XI.](#) below, and/or, if necessary, find additional facts for application of the standard. If the hearing officer, committee or arbitrator does not do as the RCO requests, the RCO shall find such additional facts as may be necessary for application of the standard of proof specified in [Section D.XI.XI.](#) The RCO shall then submit his or her findings of fact and factual conclusions to the Laboratory Director in accordance with Section D.XI.XII below.

## **XI. Standard of Proof**





**XI.1.** Pursuant to the California Whistleblower Protection Act, Government Code Section 8547.10(e), a Laboratory or non-Laboratory Hearing Officer, Laboratory Hearing Committee, Independent Party under the Administrative Review Procedure, or Arbitrator under a collective bargaining agreement shall be instructed that once the complainant demonstrates by a preponderance of the evidence that he or she engaged in activity protected by the University's Whistleblower Policy and that such activity was a contributing factor in the alleged retaliation, the burden of proof shall be on the supervisor, manager, Laboratory, or University to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the complainant had not engaged in protected disclosures or refused to obey an illegal order. If the complaint has been investigated by an RCO, the RCO shall find facts concerning the burden of proof so that the Laboratory director is able to make this determination. If the University fails to meet this burden, the employee or applicant for employment shall have a complete affirmative defense to the adverse action which was the subject of the complaint.

**XI.2.** However, pursuant to the California Whistleblower Protection Act, Government Code Section 8547.10(d), a manager or supervisor is not prevented from taking, directing others to take, recommending or approving any personnel action or from taking or failing to take a personnel action with respect to any employee or applicant for employment that the manager or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure.

**XI.3.** Special Standard of Proof for "Health Care Workers" Pursuant to Section 1278.5 of the California Health and Safety Code, discriminatory treatment (as defined in that section) of a health care worker for having presented a grievance or complaint, or for having initiated, participated, or cooperated in any investigation or proceeding against the health facility on issues relating to care, services, or condition of the health facility ("taking action"), raises a rebuttable presumption that the discriminatory treatment was taken in retaliation, if and only if both (a) the discriminatory treatment occurs within 120 days of the health care worker taking action, and (b) the health facility had knowledge of the action.

## **XII. Decision**

### **XII.1. Decision Based on Findings of Hearing Officer, Hearing Committee, or Arbitrator**

**XII.1.1** The RCO shall be provided with a copy of the decision in those cases in which the complaint has been heard before a Laboratory or non-Laboratory Hearing Officer, a Laboratory Hearing Committee, or an Arbitrator under a collective bargaining agreement.

**XII.1.2.** When there are findings that interference or retaliation has occurred, the RCO will provide that information to the Laboratory Director. If the decision of the officer,





committee or arbitrator is final and binding, the Laboratory Director will not alter the decision in any way, but may, through appropriate channels, initiate disciplinary or corrective action against the Laboratory employee found to have interfered or retaliated based on the findings in the decision.

## **XII.2. Decision Based on the Findings of an Investigation Conducted by an RCO or on Findings Under the Administrative Review Procedure**

**XII.2.1.** The RCO will present both findings of fact based on the evidence and factual conclusions to the Laboratory Director within 120 days from the date on which investigation of the complaint was assigned to the RCO unless an extension has been granted by the Staff Relations Division Leader.

**XII.2.2.** The Laboratory Director shall render a decision in the matter based on the RCO's findings of fact and factual conclusions that is consistent with the standard of proof specified in Section D.XI.XI above.

**XII.2.2.1.** The Laboratory Director may remand the findings to the RCO if he/she determines that further investigation is needed before making a decision.

**XII.2.3.** The decision will include any appropriate relief for the complainant, but will not describe any corrective action that may need to be taken against the Laboratory employee(s) accused of interference or retaliation.

**XII.2.4.** The Laboratory Director will communicate the decision in writing to the complainant and to the person(s) accused of interference or retaliation.

**XII.2.5.** The Laboratory Director, through the appropriate channel, will determine the appropriate corrective or management action, if any, that will be initiated against the Laboratory employee found to have retaliated against or interfered with an employee's or applicant's right to make a protected disclosure or to refuse an illegal order. Such action will be in accordance with the personnel policy or collective bargaining agreement applicable to the individual

**XII.2.6.** In the case of an investigation conducted by a non-LLNL RCO appointed under [Section D.XI.IX.2.4](#) above, the findings of the investigation will be presented for decision to the UC Senior Vice President—Business and Finance within 120 days from the date on which the complaint was assigned to the non-LLNL RCO unless an extension has been granted by the Senior Vice President. The Senior Vice President will make the decision in accordance with this Procedure.

## **XIII. Appeal**

The sole grounds upon which an employee or applicant for employment may appeal the decision of the Laboratory Director are:



1. That a complaint determined by the Staff Relations Division Leader to be untimely is timely; or
2. That a complaint determined by the Staff Relations Division leader to be outside of the scope of the [UC Whistleblower Protection Policy](#) (Appendix B to Section D) and the Laboratory's Procedure to Implement the UC Whistleblower Protection Policy is within scope and therefore qualifies for review under the Laboratory Whistleblower Retaliation Complaint Resolution Procedure.

Appeals are to be addressed to the University of California Senior Vice President—Business and Finance.

## **XII. Near Relatives**

Employees are required to inform their supervisor (or hiring department in the case of transfers) in advance of any near relative relationship where the two employees would have the same immediate supervisor, where one employee would have supervisory responsibility for or be responsible for the work assignments of the other, or where the two would have close working relations.

An employee who becomes a near relative of another employee (e.g., as a result of a marriage) must inform his/her supervisor when one of the above working arrangements would exist.

All such arrangements must be reviewed in accordance with [Personnel Policy B.III.4](#).

No Laboratory employee may participate in or attempt to influence reviews, decision-making processes, approvals, or other personnel actions involving a near relative.

A near relative is defined as a spouse, registered domestic partner, mother, father, children, children of registered domestic partner, sister, brother, grandparent, grandchild, and step relative and in-laws in the same relationships.

## **Appendix A. [UC Whistleblower Policies](#)**

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For policy-related questions, contacts are:  
[Employment Representatives](#), [Patricia Rzeszutko](#) X 2-6597

For web-related questions about this page, contact: [Workforce Planning and Analysis, SEDD](#)



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